



Legislative Bulletin.....November 16, 2005

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Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 1

Total Cost of Discretionary Authorizations: \$371 million over five years

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$5 billion over ten years

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of Bills Without Committee Reports: 4

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 3

H.R. 3975 — Hurricane Regulatory Relief Act of 2005 — *as amended* **(Jindal, R-LA)**

Order of Business: The bill is scheduled to be considered on Wednesday, November 16th, under a motion to suspend the rules and pass the bill, as amended.

Summary: Summary by Title

Title I: Education

- **Charter Schools:** Directs the Secretary of Education to encourage States to:
 - “include charter schools in Gulf hurricane disaster relief efforts;
 - “provide support to charter schools that are serving individuals adversely affected by a Gulf hurricane disaster; and
 - “facilitate the enrollment of students displaced by a Gulf hurricane disaster in charter schools, including by—
 - “waiving any requirement relating to whether a student has resided in the geographic area of the charter school;
 - “increasing the number of students who may attend a charter school; and
 - “removing any other relevant restrictions.”

- **Teacher Flexibility:** Provides that an individual who was employed as a teacher on August 29, 2005, by a local educational agency in a State, and who was highly qualified for such employment on such date, may be considered by another State, during the 2005-2006 school year, to be highly qualified in the same core academic subjects for purposes of subsequent employment as a teacher by a local educational agency in such other State, if:
 - “the local educational agency employing the teacher on August 29, 2005, serves an area affected by a Gulf hurricane disaster; and
 - “the local educational agency subsequently employing the teacher hired the teacher due to needs created by the enrollment of displaced students.”

- **Educational Programs for Children with Disabilities:** Permits the Secretary of Education to enter into a one-year agreement with an eligible entity to extend certain, listed deadlines under the Individuals with Disabilities Education Act related to providing special education and related services, including early intervention services, to individuals adversely affected by a Gulf hurricane disaster.

- **Paperwork Reduction Pilot Program:** Permits states affected by Hurricane Katrina, to participate in the IDEA paperwork reduction pilot program. Participation in the paperwork reduction pilot program by an affected State is to be in addition to the maximum number of States currently allowed to participate in the pilot program (15 states). The Secretary is permitted to simplify the proposal process for an affected State to participate in the program if the Secretary determines that such simplification is appropriate.

- **Federal Student Assistance:** Authorizes the Secretary of Education to waive or modify any statutory or regulatory provision applicable to student financial assistance programs (Pell Grants), as the Secretary of Education deems necessary to ensure that the calculation of expected family contribution used in the determination of need for student financial assistance

for any affected student, to reflect any changes in the financial condition of the affected student and his or her family resulting from a Gulf hurricane disaster.

- **Transfer of Credit:** For periods of enrollment beginning in calendar year 2006, each institution of higher education is to establish and publicize policies of the institution regarding the acceptance or denial of academic credit earned at another institution of higher education, which is to include a statement that such decisions will not be based solely on the source of accreditation of a sending institution, provided that the sending institution is accredited by an agency or association that is recognized by the Secretary of Education pursuant to a reliable authority as to the quality of the education or training offered.
- **Information Dissemination Regarding Pell Grants:** Directs the Secretary of Education to make special efforts, in conjunction with state efforts, to notify affected students and, if applicable, their parents, who qualify for a means-tested Federal benefit program, of their potential eligibility for a maximum Pell Grant; and to disseminate informational materials regarding their eligibility as the Secretary of Education deems appropriate.
- **Termination of Authority:** The authority of the Secretary of Education to issue waivers or modifications regarding Higher Education provisions is to expire at the conclusion of the 2005–2006 academic year.
- **Regulatory Relief:** Permits the Secretary of Education, in providing any grant or other assistant, directly or indirectly, to an entity in an affected State, to waive or modify, in order to ease fiscal burdens, any requirement relating to the following:
 - “maintenance of effort;
 - “the use of Federal funds to supplement, not supplant, non-Federal funds; and
 - “any non-Federal share or capital contribution required to match Federal funds provided under programs administered by the Secretary of Education.”

Any waiver provided under this section is to be for the 2006 fiscal year, and if the Secretary grants a waiver or modification waiving a requirement relating to maintenance of effort for a fiscal year, the level of effort required for the following fiscal year is not to be reduced because of the waiver.

Title II: Health and Human Services

- **Community Service:** Permits the Secretary of Health and Human Services to waive, with respect to any affected State, for up to 90 days after the enactment of this Act, the filing deadline for states to submit their Community Services Block Grant plans.
- **State Transfer Authority and Employees Aiding in Disaster Relief:** Permits states receiving Community Services Block Grant funding to transfer a portion of the payment or allotment available for expenditure to an affected state. For example, the state of California could choose to transfer some of their grant money to Mississippi. Additionally, a state lead agency may send an employee to an area affected by a Gulf hurricane disaster to help in providing disaster assistance. Administrative and state activities.

- **Recapture and Redistribution of Unobligated Funds:** Permits affected states to apply the recapture and redistribution of unobligated community Services Block Grant funds, provided that the state consults with the eligible entity involved.
- **Head Start:** Directs the Secretary of HHS to provide technical assistance, guidance, and resources through certain offices of the Administration for Children and Families to Head Start agencies in areas in which a major disaster has been declared, and to affected Head Start agencies, to assist the agencies involved in providing Head Start services and Early Head Start services to children affected by a Gulf hurricane disaster. The Secretary is directed to waive requirements of documentation for an individual adversely affected by a Gulf hurricane disaster who participates in a Head Start program or an Early Head Start program funded under the Head Start Act.
- **Child Care Services:** For the period up to June 30, 2006, and to the extent as the Secretary considers to be appropriate, the Secretary of HHS may, in order to ease state fiscal burdens and providing child care services to children orphaned, or of families displaced, as a result of Gulf hurricane disaster, waive or modify, for any affected State, and any State serving significant numbers of individuals adversely affected by a Gulf hurricane disaster, provisions of the Child Care and Development Block Grant Act relating to:
 - “federal income limitations on eligibility to receive child care services for which assistance is provided under such Act;
 - “work requirements applicable to eligibility to receive child care services for which assistance is provided under such Act;
 - “limitations on the use of funds under section 658G of the Child Care and Development Block Grant Act of 1990;
 - “preventing children designated as evacuees from receiving priority for child care services provided under such Act, except that children residing in a State and currently receiving services should not lose such services in order to accommodate evacuee children; and
 - “any non-Federal or capital contribution required to match Federal funds provided under programs administered by the Secretary of Health and Human Services.”

Title III: Labor

- **Pension Flexibility for Displaced Workers:** In the case of any pension plan which is an individual account plan, or any participant or beneficiary, plan sponsor, administrator, fiduciary, service provider, or other person with respect to such plan, affected by Hurricane Katrina or Hurricane Rita, or any service provider or other person dealing with the plan, the Secretary of Labor is permitted, for a period of one year, to provide waivers, suspensions, or exemptions from title I provisions of the Employee Retirement Income Security Act of 1974. Any waiver granted under this title is to be published by the Secretary in the Federal Register. The bill exempts any person from liability for any violation of Title 1, based upon any act or omission covered by a waiver, suspensions, or exemption.
- **Occupational Safety and Health:** Permits the Secretary of Labor to recruit, train, accept, and utilize, without regard to the civil service classification laws, rules, or regulations, the services of volunteer individuals to aid in or facilitate the activities administered by the Secretary through the

Occupational Safety and Health Administration for projects related to worker safety and health in response to the effects of Hurricane Katrina and Hurricane Rita.

Permits the Secretary to provide for services and costs incidental to the utilization of volunteers, including transportation, supplies, equipment (including personal protective equipment), uniforms, lodging, subsistence (without regard to place of residence), recruiting, training, supervision, and awards and recognition (including nominal cash awards). The Secretary is authorized to purchase and distribute equipment and supplies to public or private entities and individuals for projects administered by the Occupational Safety and Health Administration related to worker safety and health in response to the effects of Hurricane Katrina and Hurricane Rita.

Provides that a volunteer under this section is not to be considered a Federal employee and is not to be subject to the provisions of law relating to Federal employment, including those provisions relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits. However, a volunteer under this section is to be considered a Federal employee for certain purposes.

- **State Assistance and Matching Fund Restrictions:** Permits states that administer state plans under the Occupational Safety and Health Act of 1970 may use certain grant funds awarded under the Act to provide assistance to the Occupational Safety and Health Administration for projects related to worker safety and health in response to the effects of Hurricane Katrina and Hurricane Rita. The Secretary may increase the size of a grant to any state providing assistance by an amount of up to 100 percent of the cost of travel and subsistence, overtime, and other administrative expenses incurred by the State in providing such assistance.
- **One-year Limit:** Authorities granted in this title are terminated one year after enactment of the Act.

Title IV: General Provisions

- **Reports:** Directs each state that exercises any authority provided for in this act to submit to the Secretary of jurisdiction, a report containing information as the Secretary may require, including certain listed information.

Additionally, no later than October 30, 2006, the Secretary is to submit to the House Committee on Education and the Workforce and the Senate Committee on Health, Education, Labor, and Pensions, the state reports, as well as any additional comments made by the Secretary.

Committee Action: On October 6, 2005, the bill was introduced and referred to the House Education and the Workforce, which took no official action.

Cost to Taxpayers: There is no CBO cost estimate available for H.R. 3975.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: A committee report citing constitutional authority is unavailable.

House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

RSC Staff Contact: Joelle Cannon; joelle.cannon@mail.house.gov, (202) 226-9717

H.R. 3647—To render nationals of Denmark eligible to enter the United States as nonimmigrant traders and investors (Sensenbrenner, R-WI)

Order of Business: The bill is scheduled to be considered on Wednesday, November 16th, under a motion to suspend the rules and pass the bill.

Summary: H.R. 3647 would allow Danish citizens to obtain E-2 visas to enter the U.S. as nonimmigrant traders and investors, if Denmark extends reciprocal treatment to American citizens.

Additional Background: An E-2 visa is available to a nonimmigrant alien who is “entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national, and the spouse and children of any such alien if accompanying or following to join him...solely to develop and direct the operations of an enterprise in which he has invested...a substantial amount of capital...” [Section 101(a)(15)(E) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(E))]

The Judiciary Committee notes that there is no numerical cap on E-2 visas. An alien may be admitted initially for a period of two years, subject to two-year extensions. Currently, the nationals of 74 countries are eligible for E-2 status. 24,506 aliens (including dependents) were granted E-2 visas in fiscal year 2003.

Committee Action: On September 6, 2005, the bill was referred to the Judiciary Committee, which, three weeks later, marked it up and ordered it reported to the full House by voice vote.

Administration Position: Since the U.S. and Denmark signed a protocol on May 2, 2001, granting Danes eligibility for E-2 visas, the Administration is presumably supportive of H.R. 3647.

Cost to Taxpayers: CBO reports that this bill would have no net cost to the federal government.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: The Judiciary Committee, in House Report 109-251, cites constitutional authority in Article I, Section 8, Clause 4 (the congressional power to “establish a uniform Rule of Naturalization”).

RSC Staff Contact: Paul S. Teller, paul.teller@mail.house.gov, (202) 226-9718

H.R. 1036—To amend title 17, United States Code, to make technical corrections relating to copyright royalty judges (Smith, R-TX)

Order of Business: The bill is scheduled to be considered on Wednesday, November 16th, under a motion to suspend the rules and pass the bill.

Summary: H.R. 1036 would make a variety of purely technical and clarifying amendments to title 17 of the U.S. Code, regarding copyright royalty judges (created by the Copyright Royalty and Distribution Reform Act of 2004, Public Law 108-419). The clarifying corrections are mainly aimed at removing unintended ambiguities about the respective roles of the U.S. Copyright Office and the newly established Copyright Royalty Judges in proceedings that involve the determination of copyright royalty rates and royalty distributions.

Additional Background: The Copyright Royalty and Distribution Reform Act replaced the previous system of copyright arbitration, which used copyright arbitration royalty panels convened by the Librarian of Congress, with Copyright Royalty Judges. These judges determine rates and distribution of royalties for certain material when copyright users and owners cannot reach agreement in private negotiation.

Committee Action: On March 2, 2005, the bill was referred to the Judiciary Committee and the Subcommittee on Courts, the Internet, and Intellectual Property, which marked up the bill on the following day. The Subcommittee forwarded the bill to the full Committee by voice vote. On March 9th, the full Committee ordered the bill reported to the full House by voice vote.

Cost to Taxpayers: CBO confirms that this legislation would not affect the federal budget in any way.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: The Judiciary Committee, in House Report 109-64, cites constitutional authority in Article I, Section 8, Clause 8 (the congressional power to “promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries”).

RSC Staff Contact: Paul S. Teller, paul.teller@mail.house.gov, (202) 226-9718

H.R. 866 — To make technical corrections to the United States Code — *as reported* (Smith, R-TX)

Order of Business: The bill is scheduled for consideration on Wednesday, November 16, 2005, under a motion to suspend the rules and pass the bill.

Summary: H.R. 866 would correct cross-references, punctuation and typographical errors, and make various changes and other technical corrections to parts of the United States Code.

Committee Action: H.R. 866 was introduced on February 16, 2005, and referred to the Committee on Judiciary. The bill was marked-up on April 13, 2005, and ordered reported to the House by a voice vote (H. Rept. [109-48](#)).

Cost to Taxpayers: CBO estimates that “enacting H.R. 866 would have no impact on the federal budget. Enacting the bill would not affect direct spending or revenues.”

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: The Committee Report, H. Rept. [109-48](#), cites constitutional authority for this legislation in Article 1, Section 8 (powers of Congress) of the Constitution, but fails to cite a specific Clause.

House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

RSC Staff Contact: Derek V. Baker; derek.baker@mail.house.gov; 202-226-8585

H.R. 1442 — To complete the codification of title 46, United States Code, “Shipping”, as positive law — *as reported* (Sensenbrenner, R-WI)

Order of Business: The bill is scheduled for consideration on Wednesday, November 16, 2005, under a motion to suspend the rules and pass the bill.

A nearly identical bill, H.R. 4319, passed the House during the 108th Congress by a voice vote on September 28, 2004.

Summary: H.R. 1442 would codify portions of title 46, United States Code, and make technical changes to various shipping laws enforced by the Maritime Administration, the U.S. Coast Guard, and other federal agencies. According to the committee report, the bill completes codification of title 46 by “reorganizing and restating the laws currently in the appendix to title 46. It codifies existing law rather than creating new law.”

Committee Action: H.R. 1442 was introduced on March 17, 2005, and referred to the Committee on Judiciary. The bill was marked-up on June 29, 2005, and ordered reported to the House by a voice vote (H. Rept. [109-170](#)).

Cost to Taxpayers: CBO estimates that “enacting this bill would result in no cost to the federal government and would not affect direct spending or revenues.”

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: The Committee Report, H. Rept. [109-170](#), cites constitutional authority for this legislation in Article 1, Section 8 of the Constitution, but fails to cite a specific Clause.

House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

RSC Staff Contact: Derek V. Baker; derek.baker@mail.house.gov; 202-226-8585

H.Res. 547 — Expressing the sense of the House of Representatives that the United States Court of Appeals for the Ninth Circuit deplorably infringed on parental rights in *Fields v. Palmdale School District* — as introduced (Murphy, R-PA)

Order of Business: The bill is scheduled for consideration on Wednesday, November 16, 2005, under a motion to suspend the rules and pass the bill.

Summary: H.Res. 547 would resolve that it is the sense of the House of Representatives that:

- 1) “the fundamental right of parents to direct the education of their children is firmly grounded in the Nation’s Constitution and traditions;
- 2) “the Ninth Circuit’s ruling in *Fields v. Palmdale School District* undermines the fundamental right of parents to direct the upbringing of their children; and
- 3) “the United States Court of Appeals for the Ninth Circuit should agree to rehear the case en banc in order to reverse this constitutionally infirm ruling.”

Among the resolution’s findings are the following:

- “the Ninth Circuit stated, ‘once parents make the choice as to which school their children will attend, their fundamental right to control the education of their children is, at the least, substantially diminished’;
- “a plurality of the Supreme Court has stated, ‘it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children’ (*Troxel v. Granville*, 530 U.S. 57, 66 (2000) (plurality opinion));
- “the decision in *Fields* establishes a dangerous precedent for limiting parental involvement in the public education of their children; and
- “the rights of parents ought to be strengthened whenever possible as they are the cornerstone of American society.”

The resolution cites several prior Supreme Court cases as precedents for upholding the rights of the parents in controlling the education of their children.

Additional Information: As the text of the amendment notes, this resolution is in response to the recent decision in *Fields v. Palmdale* by the U.S. Court of Appeals for the Ninth Circuit. The school conducted a survey of schoolchildren in the first, third, and fifth grade (roughly ages seven to ten) that included ten different questions containing sexual references. Children were asked to rate their frequency of thoughts or emotions on a scale for each question, three examples of which are listed below:

- “Touching my private parts too much”
- Having sex feelings in my body
- Can t stop thinking about sex

Upon learning that their children had been questioned at school regarding sexual topics such as these, several parents filed suit in District Court on both federal and state claims (two of the four causes of action were the right to privacy). The District Court dismissed both claims and found in favor of the defendant. On appeal, the Ninth Circuit Court upheld the decision and stated that there is no fundamental right of parents to be the exclusive provider of information regarding sexual matters to their children, either independent of their right to direct the upbringing and education of their children or encompassed by it.

Though there is significant concern among conservatives regarding the language and reasoning of the Ninth Circuit Court in *Fields v. Palmdale School District*, some conservatives have also expressed serious reservations regarding the plaintiff s privacy claims in the case. Specifically, it is widely accepted among legal scholars that *Roe v. Wade* was improperly decided by the Supreme Court based on the Constitution s Bill of Rights or its penumbras. The Supreme Court found a non-existent constitutional right of privacy assumed within the language of this amendment.

In upholding the lower court s decision in *Fields v. Palmdale*, the Ninth Circuit Court in essence rejected a broad interpretation of the right of privacy, with which many strict constructionists might generally agree. While the resolution states, “the fundamental right of parents to direct the education of their children is firmly grounded in the Nation’s Constitution and traditions,” the Founders did not specifically write such a “fundamental right” in the plain language of the Constitution. Strict constructionists argue that when the Constitution is found insufficient or vague in an area of the law, it is preferable for the legislature – rather than the judiciary – to clarify or add to current law to create such a fundamental right.

Committee Action: H.Res. 547 was introduced on November 10, 2005, and referred to the Committee on Judiciary, which took no official action on the bill.

Cost to Taxpayers: The resolution authorizes no expenditure.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

RSC Staff Contact: Derek V. Baker; derek.baker@mail.house.gov; 202-226-8585

H.R. 3351 – To make technical corrections to laws relating to Native Americans (Pombo, R-CA)

Order of Business: The bill is expected to be considered on Wednesday, November 16th, under a motion to suspend the rules and pass the bill.

Summary: H.R. 3351 would make numerous changes to current law relating to Native Americans including the following highlights:

- Increases the current limit on guaranteed loans distributed under the Bureau of Indian Affairs' Loan Guarantee Program from \$500 million to \$1.5 billion. Under current law, the program guarantees up to 90% of loans made to Indian tribes (and Alaska Natives) and individual Indians to establish, acquire, or expand Indian-owned businesses. CBO estimates the \$500 limit will be exhausted in 2007 at which point (absent enactment of this legislation) no new loans could be guaranteed until existing ones were repaid. H.R. 3351 would also authorize both for-profits and nonprofits as eligible borrowers under the program and establish a secondary market for the resale of the program's guaranteed loans.
- Clarifies current law to allow for binding arbitration clauses to be included in contracts affecting land within the Gil River Indian Community Reservation.
- Extends the authorization for the Indian Tribal Justice Technical and Legal Assistance Program through FY10 at "such sums as are necessary." Under current law, this program provides grants to *nonprofits* that provide legal assistance services for Indian tribes and their members. Given that this program was funded at \$10 million in FY05, CBO anticipates that extending its authorization will cost \$52 million over five years subject to appropriations.
- Extends the authorization for the Tribal Justice System Program through FY10 (grants to hire judicial personnel, provide technical assistance, etc.), costing \$168 million over three years subject to appropriations. The program is currently authorized through FY07.
- Clarifies that land conveyed by the federal government to an Alaskan Native Corporation that is then exchanged with another Alaskan Native Corporation is deemed to have been conveyed pursuant to the Alaska Native Claims Settlement Act. According to the Resources Committee, this provision clarifies that such land retains its non-taxable status after the exchange.
- Authorizes the Bureau of Indian Affairs (BIA) to accept funds from the State of Mississippi for deposit in a trust account for the benefit of the MS Band of Choctaw Indians pursuant to an agreement made between the tribe and the Department of Transportation on June 7, 2005 (for the purpose of improving Highway 16 in Neshoba County, MS). **RSC Bonus Fact:** The word Neshoba is Choctaw for Grey Wolf (a slight variation off the general Choctaw word for wolf, Nashoba).
- Clarifies that the Pueblo Indian *Tribes* of New Mexico (recognized as having the powers of self-governance) has criminal jurisdiction over any offense committed by a Pueblo or an Indian in general – and not the State of New Mexico. In addition, the federal government is provided jurisdiction over certain crimes outlined in current law (including murder, manslaughter,

kidnapping, assault, etc.). Under current law, an Indian who commits these specific crimes is subject to the same law and penalty as all persons committing such crimes within the U.S.

- Conveys 1,290 acres of land from the Army Corps of Engineers to the Department of Interior to be held in trust for the Prairie Island Indian Community in Minnesota. However, the land may **not** be used for “human habitation” *or to conduct gaming activities*.
- Adds the following tribes to the list of exceptions to the 25-year tribal business land lease requirement (any leasing of reservation lands held in trust cannot normally exceed 25-years): the Umatilla Indian Reservation, the Muckleshoot Indian Reservation, the Fallon Paiute Shoshone Tribes, the Yurok Indian Tribe, the Hopeland Band of Pomo Indians, the Paskenta Band of Nomlaki Indians, and lands comprising the Moses Allotment Numbered 10 in Chelan County, WA.

Committee Action: On July 19, 2005, the bill was referred to the Resources Committee, which on September 22nd marked up and by unanimous consent ordered the amended bill favorably reported to the full House for consideration.

Cost to Taxpayer: According to CBO, H.R. 3351 would authorize \$244 million in spending over five years subject to appropriations.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill extends two federal grant programs and increases the level of federally guaranteed BIA loans that can be outstanding by \$1 billion.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: According to a draft report, the Resources Committee cites constitutional authority in Article I, Section 8 but does not provide a specific clause. However, the Indian Commerce Clause (Clause 3) provides authority to regulate Commerce with the Indian tribes.

RSC Staff Contact: Russ Vought, russell.vought@mail.house.gov, (202) 226-8581

H.R. 562 — To authorize the Government of Ukraine to establish a memorial on Federal land in the District of Columbia to honor the victims of the manmade famine that occurred in Ukraine in 1932-1933 — *as introduced (Levin, D-MI)*

Order of Business: The bill is scheduled for consideration on Wednesday, November 16, 2005, under a motion to suspend the rules and pass the bill.

Summary: H.R. 562 would authorize the Government of Ukraine to establish a memorial on federal land in the District of Columbia to honor the victims of the Ukrainian famine-genocide of 1932-1933. The bill specifies that the memorial must be in accordance with the Commemorative Works Act (be compliant with standards for commemorate works). The bill also specifies that the U.S. government

“shall not pay for any expense for the establishment of the memorial or its maintenance.” Among the resolutions findings is the following:

- “In the years 1932-1933, Ukraine was ravaged and its people brought to the verge of physical extinction by a famine caused not by natural causes such as pestilence, drought, floods, or poor harvest, but as a consequence of a premeditated policy on the part of the Soviet Government led by Joseph Stalin to crush the nationally conscious Ukrainian people and destroy their national, political, cultural, and religious rights.”

The bill does not specify what land is to be used or how the land will be obtained. According to the sponsor’s office, the bill will allow the Government of Ukraine along with the Ukrainian-American community to work with the National Capital Memorial Advisory Commission to find a suitable site for the project.

Additional Information: As the bill’s findings note, a large-scale famine occurred in Ukraine in 1931-1932 as a direct result of Joseph Stalin’s Soviet policies, including the seizure of excessive portions of Ukraine’s agricultural crops. It has been estimated that at least 5 million men, women, and children died in Ukraine and 1-2 million more died in other surrounding regions.

Possible Conservative Concerns: A representative from the National Park Service, under the Department of the Interior, testified before the National Parks Subcommittee that the Department is opposed to H.R. 562: **The Department opposes enactment of this legislation** because it duplicates efforts currently underway to establish a memorial that would honor all victims of communism worldwide. This memorial, the Victims of Communism Memorial, was authorized by P.L. 103-199 on December 17, 1993.”

To that end, Congress passed H. Res. 752 by voice vote on September 28, 2004, stating that the “House of Representatives expresses continued support for the construction of the Victims of Communism Memorial.”

Committee Action: H.R. 562 was introduced on February 2, 2005, and referred to the Committee on Resources’ Subcommittee on National Parks, which took no official action.

Cost to Taxpayers: A CBO score of H.R. 562 is unavailable, but the bill does not authorize any expenditures. However, it is unclear what federal land is to be used for the memorial and how the Government of Ukraine will acquire the land.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: A committee report citing constitutional authority is unavailable.

House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

H.R. 1492—To provide for the preservation of the historic confinement sites where Japanese Americans were detained during World War II (Thomas, R-CA)

Order of Business: The bill is scheduled to be considered on Wednesday, November 16th, under a motion to suspend the rules and pass the bill.

Note: Under the House Republican Conference Rules, no bills creating new programs may be considered under suspension of the rules. This rule can be waived by a vote of the elected leadership. H.R. 1492, which would create a new federal grant program, received a waiver from the elected leadership.

Summary: H.R. 1492 would create a **new \$38 million grant program** within the National Park Service to “encourage, support, recognize, and work in partnership with citizens, Federal agencies, State, local, and tribal governments, other public entities, educational institutions, and private nonprofit organizations for the purpose of identifying, researching, evaluating, interpreting, protecting, restoring, repairing, and acquiring historic confinement sites” where Japanese Americans were detained during World War II. This new program would be implemented via federal grants to state, local, and tribal governments, other public entities, educational institutions, and private nonprofit organizations, in consultation with the Japanese American National Heritage Coalition. The federal share of any project under this new program would be 75%. The program would sunset two years after the last of the \$38 million is disbursed.

Funds under this legislation could be used to acquire four non-federal properties (listed in the bill), though the program overall could apply to at least ten internment sites. This acquisition authority would not constitute a federal designation and could not have any effect on private property ownership (without the written consent of the private property owners).

Additional Background: As the Resources Committee points out, two years after the bombing of Pearl Harbor, President Roosevelt signed Executive Order 9066 that called for all people of Japanese ancestry residing on the west coast of the U.S., most of whom were American citizens, to be placed in relocation camps. The Committee describes this action as “the largest forced relocation in U.S. history--over 120,000 Japanese-American citizens and Japanese aliens were uprooted from their homes and interned in sites throughout the country.”

There are currently two units in the National Park System that preserve and interpret the internment period: Manzanar National Historic Site and Minidoka Internment National Monument:

<http://www.nps.gov/manz/>

<http://www.nps.gov/miin/>

Committee Action: On April 6, 2005, the bill was referred to the Resources Committee, which, on May 18th, marked it up and ordered it reported to the full House by unanimous consent. The National Parks Subcommittee held a hearing on the bill on April 14th.

Possible Conservative Concerns: Conservatives may be concerned about creating a new multimillion-dollar federal grant program.

Administration Position: **The Administration OPPOSES this bill:**

<http://resourcescommittee.house.gov/archives/109/testimony/2005/michaelsnyder0414.htm>

Cost to Taxpayers: The bill would authorize \$38 million, which CBO says would be spread out over five years (\$8 million in the first year).

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, it would create a new grant program.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: The Resources Committee, in House Report 109-142, cites constitutional authority in Article I, Section 8 (but no clause cited) and Article IV, Section 3 (clause 2 gives Congress the power to “dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.”). House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

RSC Staff Contact: Paul S. Teller, paul.teller@mail.house.gov, (202) 226-9718

H.Con.Res. 230—Expressing the sense of the Congress that the Russian Federation must protect intellectual property rights (Issa, R-CA)

Order of Business: The bill is scheduled to be considered on Wednesday, November 16th, under a motion to suspend the rules and pass the bill.

Summary: H.Con.Res. 230 would resolve a sense of Congress that:

- “the Russian Federation should provide adequate and effective protection of intellectual property rights, or it risks losing its eligibility to participate in the Generalized System of Preferences (GSP) program; and
- “as part of its effort to accede to the World Trade Organization, the Russian Federation must ensure that intellectual property is securely protected in law and in practice, by demonstrating that the country is willing and able to meet its international obligations in this respect.”

Additional Background: The resolution notes that, “Russia remains on the Special 301 Priority Watch List compiled by the United States Trade Representative (USTR), and the Congress is gravely concerned about the failure of the Russian Federation to live up to international standards in the protection of intellectual property rights, a core American asset.”

According to U.S. Trade Representative, enforcement of intellectual property rights in Russia “remains weak and caused substantial losses for the U.S. copyright, trademark, and patent industries in the last

year. Piracy in all copyright sectors continues unabated, and the U.S. copyright industry estimated losses of \$1.7 billion in 2004.”

Committee Action: On July 28, 2005, the resolution was referred to the Ways & Means Committee, which took no official action on it.

Cost to Taxpayers: The resolution would authorize no expenditure.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

RSC Staff Contact: Paul S. Teller, paul.teller@mail.house.gov, (202) 226-9718

H.Res. 500—Recognizing the 60th anniversary of the disappearance of the 5 naval Avenger torpedo bombers of Flight 19 and the naval Mariner rescue aircraft sent to search for Flight 19 (Shaw, R-FL)

Order of Business: The resolution is scheduled to be considered on Wednesday, November 16th, under a motion to suspend the rules and pass the bill.

Summary: H.Res. 500 would resolve that the House:

- “recognizes the 60th anniversary of the disappearance of the 5 naval Avenger torpedo bombers of Flight 19 and the naval Mariner rescue aircraft sent to search for Flight 19;
- “honors the memory of the 27 Navy airmen lost in these disappearances;
- “recognizes the historical significance of Flight 19;
- “acknowledges continuing efforts to determine what caused these disappearances; and
- “commends the Naval Historical Center for preserving the history of Flight 19.”

Additional Background: As the resolution indicates, on December 5, 1945, the five Avenger torpedo bombers of Flight 19, originating at the Naval Air Station of Fort Lauderdale, Florida, and its crew of 14 Navy airmen, disappeared. The Mariner rescue aircraft sent to search for Flight 19, originating at the Naval Air Station of Banan River, Florida, and its crew of 13 Navy airmen, also disappeared on that date. No aircraft, debris, or remains have ever been recovered, despite extensive searching.

Committee Action: On October 18, 2005, the resolution was referred to the Armed Services Committee, which took no official action on it.

Cost to Taxpayers: The resolution would authorize no expenditure.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

RSC Staff Contact: Paul S. Teller, paul.teller@mail.house.gov, (202) 226-9718

H.R. 4326—To authorize the Secretary of the Navy to enter into a contract for the nuclear refueling and complex overhaul of the U.S.S. Carl Vinson (CVN-70) (Jo Ann Davis, R-VA)

Order of Business: The bill is scheduled to be considered on Wednesday, November 16th, under a motion to suspend the rules and pass the bill.

Summary: H.R. 4326 would allow the Secretary of the Navy to enter into a contract for the nuclear refueling and overhaul of the U.S.S. Carl Vinson (CVN-70). The bill would cap FY2006 authorizations for commencement of this contract at \$89 million. Additional FY2006 amounts could be obligated by subsequent authorizing and appropriating language in separate legislation. The section of the continuing resolution (the “CR”) that prohibits the commencement of such contracts would be waived for this contract.

Additional Background: Similar authorizing language passed as part of the Defense Authorization bill (Section 126 of H.R. 1815), except that the initial authorization amount was \$1.5 billion. The House-passed Defense Appropriations bill (H.R. 2863) appropriated \$1.3 billion for “CVN Refueling Overhauls” for FY2006.

Reports indicate that 2,500 jobs would be lost in Virginia this week if this contract commencement authorization is not signed into law.

Reports indicate that this refurbishment could cost upwards of \$3 billion.

Committee Action: On November 15, 2005, the bill was referred to the Armed Service Committee, which took no official action on it.

Administration Position: The Defense Department is supportive of this legislation.

Cost to Taxpayers: The bill would authorize \$89 million in FY2006.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: Though a committee report citing constitutional authority specifically for this stand-alone legislation is unavailable, similar language was included in the Defense Authorization Act (H.R. 1815), the constitutional authority for which is Article I, Section 8, Clause 1 (the congressional power to provide for the common defense).

RSC Staff Contact: Paul S. Teller, paul.teller@mail.house.gov, (202) 226-9718

H.Con.Res. 268— Expressing the sense of the Congress regarding oversight of the Internet Corporation for Assigned Names and Numbers — (Doolittle, R-CA)

Order of Business: The resolution is scheduled to be considered on Wednesday, November 16, 2005, under a motion to suspend the rules and pass the bill.

Summary: H.Con.Res. 268 expresses the sense of Congress that:

- “it is incumbent upon the United States and other responsible governments to send clear signals to the marketplace that the current structure of oversight and management of the Internet’s domain name and addressing service works, and will continue to deliver tangible benefits to Internet users worldwide in the future; and
- “therefore the authoritative root zone server should remain physically located in the United States and the Secretary of Commerce should maintain oversight of ICANN so that ICANN can continue to manage the day-to-day operation of the Internet’s domain name and addressing system well, remain responsive to all Internet stakeholders worldwide, and otherwise fulfill its core technical mission.”

According to the resolution, the “origins of the Internet can be found in United States Government’s funding of research to develop packet-switching technology and communications networks, starting with the ‘ARPANET’ network established by the Department of Defense’s Advanced Research Projects Agency in the 1960s and carried forward by the National Science Foundation’s ‘NSFNET.’ In the following years the Internet evolved from a United States Government research initiative to a global tool for information exchange as in the 1990s it was commercialized by private sector investment, technical management and coordination.”

Since its inception, the authoritative root zone server has been physically located in the United States, and “existing structures have worked effectively to make the Internet the highly robust medium that it is today.” The resolution state, “the security and stability of the Internet’s underlying infrastructure, the domain name and addressing system, must be maintained, and the United States has been committed to the principles of freedom of expression and the free flow of information, as expressed in Article 19 of the Universal Declaration of Human Rights, and reaffirmed in the Geneva Declaration of Principles adopted at the first phase of the World Summit on the Information Society.”

The resolution states, “ICANN is the proper organization to coordinate the technical day-to-day operation of the Internet’s domain name and addressing system. ... Governments have legitimate concerns with respect to the management of their country code top level domains and the United States Government is committed to working successfully with the international community to address those concerns, bearing in mind the need for stability and security of the Internet’s domain name and addressing system. ... Internet governance discussions in the World Summit should focus on the real threats to the Internet’s growth and stability, and not recommend changes to the current regime of domain name and addressing system management and coordination on political grounds unrelated to any technical need.”

Additional Information: According to the Committee, currently, the Secretary of Commerce has a contract with a not-for-profit California corporation called ICANN. ICANN manages the day-to-day technical operations of the Internet, including the Domain Names System (DNS) and the top level domains such as .com, .net, and .org, along with the nearly 250 individual country codes (.uk, .ca, .iq). Last month, at pre-conference discussions for the World Summit on the Information Society in

Tunesia, the European Union withdrew its support for the current system governing the Internet. According to the committee, there is virtually no benefit to making this change and the risks are too high, including possible loss of free speech and possible taxes placed upon internet use.

According to an Associated Press article running on the Drudge Report this morning, an agreement was reached Tuesday evening, and the United States will continue to maintain authority over the Internet's addressing system. The terms of the agreement included the creation of the Internet Governance Forum, which will be an international group meeting to discuss various Internet issues.

Committee Action: On October 18, 2005, the resolution was introduced and referred to the House Committee on Energy and Commerce, which took no official action.

Cost to Taxpayers: H.Con.Res. 268 authorizes no expenditure.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: A committee report citing constitutional authority is unavailable.

House Rule XIII, Section 3(d)(1), requires that all committee reports contain "a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution." [*emphasis added*]

RSC Staff Contact: Joelle Cannon; joelle.cannon@mail.house.gov, (202) 226-9717

H.R. 4133 – National Flood Insurance Program Further Enhanced Borrowing Authority Act (Fitzpatrick, R-PA)

Order of Business: The bill is expected to be considered on Wednesday, November 16th, under a motion to suspend the rules and pass the bill.

Summary: H.R 4133 increases by \$5 billion (from \$3.5 billion to \$8.5 billion), the amount the Federal Emergency Management Agency (FEMA) may borrow from the U.S. Treasury to carry out the National Flood Insurance Program (NFIP). The bill contains no other reforms to the NFIP.

Additional Background: Under current law, FEMA offers flood insurance through the NFIP to reduce flood losses. If premiums and interest income are insufficient to pay claims, FEMA can borrow from the U.S. Treasury up to a level set in statute. This loan must then be repaid with interest. Until recently, FEMA could borrow up to \$1.5 billion. However, in September of this year, Public Law 109-65 was enacted to increase that borrowing authority by \$2 billion to its current level of \$3.5 billion (through the end of FY08).

As a result of losses resulting from Hurricanes Katrina and Rita, there is projected to be \$24 billion in total NFIP claims that FEMA is legally obligated to pay over the next few months. Accordingly, the limit on FEMA's borrowing authority needs to be increased again. Upon enactment of this bill (with

its \$5 billion increase), FEMA is expected to be able to pay NFIP claims through the middle of December at which point another increase will be required. **Note:** The Financial Services Committee is scheduled to mark up a new bill (H.R. 4320) on November 16th to further increase the borrowing authority *by \$13.5 billion to \$22 billion*.

According to the Financial Services Committee, the total level of claims from Hurricanes Katrina and Rita far surpasses the total claims paid over the entire history of the program. Furthermore, CBO states that FEMA will not even begin to pay off this loan within the next ten years (see below). Some conservatives may be concerned that as a result of these sizable claims the increases in FEMA's borrowing authority (1) may be forgiven in the future and the funds never repaid and (2) are not being coupled with other needed reforms to lower the long-term cost of the NFIP. **Note:** The Committee's mark of the next increase (H.R. 4320) does include some reforms to the program.

For more information on the NFIP and opportunities for reform, please see:
<http://www.heritage.org/Research/Regulation/wm888.cfm?renderforprint=1>

Committee Action: On September 25, 2005, the bill was referred to the Financial Services Committee, which on September 28th marked up and by voice vote ordered the bill reported to the full House for consideration.

Cost to Taxpayer: According to CBO, H.R. 4133 would increase direct spending by \$5 billion over ten years. Although FEMA is required to repay this funding over time, CBO does not anticipate this occurring within the ten-year budget window.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: A committee report citing constitutional authority is unavailable.

RSC Staff Contact: Russ Vought, russell.vought@mail.house.gov, (202) 226-8581

H.Res. 546 — Condemning in the strongest terms the terrorist attacks that occurred on November 9, 2005, in Amman, Jordan (Ros-Lehtinen, R-FL)

Order of Business: The resolution is scheduled to be considered on Wednesday, November 16th, under a motion to suspend the rules and pass the bill.

Summary: H.Res. 546 would resolve that the House:

- “condemns in the strongest terms the terrorist attacks that occurred on November 9, 2005, in Amman, Jordan;
- “expresses its condolences to the families and friends of those individuals who were killed in the attacks and expresses its sympathies to those individuals who have been injured;
- “expresses solidarity and support of the people and Government of the United States with the people and Government of the Hashemite Kingdom of Jordan as they recover from these cowardly and inhuman attacks; and

- “expresses its readiness to support and assist the Jordanian authorities in their efforts to bring to justice those individuals responsible for the recent attacks in Jordan and to pursue, disrupt, undermine, and dismantle the networks which plan and carry out such attacks.”

Additional Background: On November 9, 2005, homicide bombers detonated themselves at the Radisson, Hyatt, and Days Inn hotels in Amman, Jordan, resulting in the deaths of at least 60 civilians and the injuries of hundreds of others. Jordan has arrested suspected terrorists with possible ties to Al Qaeda. One would-be attacker’s bomb failed to detonate, and she has since confessed to Jordanian authorities.

Committee Action: On November 10, 2005, the resolution was referred to the International Relations Committee, which took no official action on it.

Administration Position: The Administration has condemned the attacks in Jordan and is helping Jordanian officials in their investigation.

Cost to Taxpayers: The resolution would authorize no expenditure.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

RSC Staff Contact: Paul S. Teller, paul.teller@mail.house.gov, (202) 226-9718

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